



# TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

## **Board of Ethics**

Peter Tesei, 1<sup>st</sup> Selectman, Ex Officio Member  
Paul A. deBary, Chairman  
Heather Parkinson-Webb, Secretary  
Jane A. Finn, Member  
Robert F. Grele, Member  
Louis Pittocco, Member

## **Annual Report of the Board of Ethics**

Pursuant to Section 2.12 (c) of the Greenwich Code of Ethics (the “Code”), the Board of Ethics is required to prepare and submit an annual report of its activities to the Board of Selectmen and the Representative Town Meeting. The Board is pleased to submit the following report for the fiscal year ending June 30, 2008.

## **Executive Summary**

The Board undertook several initiatives to improve the awareness of Town employees, its elected and appointed officials and members of the general public about the provisions of the Code of Ethics, including the initiation of a dedicated ethics hot line for the Town. Particularly in light of the fact that these efforts would make it easier to file them, we are pleased to report that there were no complaints filed with the Board of Ethics during the 2007-2008 Fiscal Year.

A review of the annual disclosure statements filed with the Town Clerk shows a very low percentage of Town Officers reporting interests in transactions with the Town, and those interests that were reported were for the most part insubstantial. However, it is difficult to assess whether there are Town Officers who have substantial interests who are not filing the required form. Of the 48 forms filed with the Town Clerk (a higher than normal response), 30 were anomalous as they contained no information concerning financial interests. Of the remaining 18, only six were fully compliant with the Code, with the others contained various errors, including untimely filings, lack of signatures or notarization and failure to include attachments or other required information. The review suggests that these failures were likely due to confusion over the requirements of the Code or lack of adequate instructions as to how to complete the required form. This suggests both that the form should be revised to include specific instructions and that the Town should consider additional ethics training for Town Officers.

There were two requests for advisory opinions requested during the fiscal year, both of which involved the disclosure of spousal interests in the annual financial disclosure form. The opinions rendered by the Board are summarized below.

After reviewing its operations during the 2007-2008 Fiscal Year, the Board has made recommendations in three areas: 1) implementing enhancements to the Ethics Hotline, 2) consideration of enhanced reporting by key officers and employees, and 3) the implementation of additional ethics training, particularly as to the requirements of the Code with respect to annual disclosure filings.

## **Complaints of Violations of the Code**

We received no complaints of violations of the Code during the 2007-2008 Fiscal Year. However, the Board was active in efforts to increase awareness of both the requirements of the Code and the procedures for filing complaints. These procedures were facilitated by the institution of an Ethics Hotline for the Town during the fiscal year, as well steps taken to make the procedure for filing complaints more accessible through the Town website. Due to the high level of cooperation and active involvement that the Board experienced in connection with these efforts to increase, we are inclined to believe that the lack of complaints is indicative of a high level of ethical behavior in Town Government.

## **Annual Disclosure Statements**

Requirements of the Code. Section 2.9 of the Code requires Town Officers to file disclosure statements if they have a substantial financial interest in any transaction with the Town totaling \$100 or more. Where an officer has such an interest, the annual disclosure statement is required to:

- be filed within the 30 days following the end of the Fiscal Year
- be filed with the Town Clerk
- be filed on the form prescribed by the Board of Ethics
- be signed under oath
- disclose the position of the filer as a Town Officer
- state the nature of the interest
- state the total amount received from the transaction

The Code does not require that a reminder of these requirements be sent to all Town Officers. However, for many years it has been the practice to send a reminder, signed by the Chairman of the Board of Ethics, to all Town Employees and members of the RTM. Such reminders do not appear to be sent to other Town Officers, however, such as members of various Boards and Commissions, consultants and some other elected officials who fall within the broad definition of Town Officer under the Code.

Compliance. It is impossible to judge the degree of compliance with the Town's financial disclosure policy with any degree of certainty. At some point, it might be informative to conduct an anonymous survey of a representative sample of Town Officers that was designed to elicit their degree of awareness of the reporting requirement and assess the degree to which they complied with the requirement during the most recent

reporting period. Such a survey could then be used as a basis for determining whether the existing system is successful or should be modified in some way or whether additional training of Town Officers would result in a higher level of compliance.

The following chart summarizes the results of a review of the disclosure forms filed for the 2007-2008 fiscal year as of August 20, 2008:

	<b>RTM</b>	<b>Town Employee</b>	<b>Other</b>	<b>Total</b>
<b>Nothing to Declare</b>				
Timely	5		1	6
Early, Notarized	8	6	4	18
Early, Not Notarized	3			3
Early, Unsigned	1			1
Undated, Unsigned	1	1		<u>2</u>
				30
<b>Something to Declare</b>				
Timely, Compliant	4	2		6
Timely, Non-compliant	1	1	1	3
Early, Notarized	5			5
Early, Not notarized	3	1		<u>4</u>
				18

As shown by the chart, Town Officers filed 48 Annual Disclosure Statements with the Town Clerk. Of these, only six were in strict conformity with the Code of Ethics. This high rate of non-conformity is partly the result of excessive zeal, as 60% of the filings showed no financial interest that is required to be declared. Six of these forms are non-conforming because they do not need to be filed rather than because they indicate some failure to adhere to the requirements of the Code. The remainder of these forms contain additional anomalies, however, the most common of which was that they were filed before the end of the reporting period.

Regrettably, among both the required and non-required filings that were made, there was a high degree of failure to adhere to the procedures required by the Code. In particular, among those filing to report an interest, only one-third were in compliance with the Code. Among the lapses were failures to properly identify the Town Officer or give the information about the amount of the transaction required by the Code. The Board feels that additional training may be appropriate at this time to ensure that all Town Officers understand the requirements of the Code.

*The Issue of Mandatory Filings.* The filing of statements that show nothing to declare may be an expression of more than just excessive zeal and may be considered of particular significance due to the positions of the persons filing these reports. Over 50% of these reports were filed by members of the RTM, including a number of District Chairs. Among the remainder of these reports, many were filed by persons with particular responsibility for financial matters or who have involvement in the ethics

disclosure process. By filing forms that show nothing to declare these individuals may be suggesting that they feel that a mandatory filing system should be implemented.

The Code of Ethics currently requires reporting on an exceptions only basis. The statements are only required to be filed in a year that the Town Officer has such an interest in a transaction. Thus there is no requirement that anyone file a statement confirming the he or she had no such interest during the fiscal year. At the time that the Code was adopted this represented an understandable compromise. By not asking all Town Officers to file a report whether they had something to disclose or not, the Town avoided being buried by a blizzard of paper reports that contained no significant information. However, by using an exceptions reporting system, the Town cannot be sure that all Town Officers are aware of the requirements. In addition, a Town Officer who neglects to disclose an interest can only be held accountable for failing to file. If all Town Officers even where they had no interest, they could be held accountable for making a false statement under oath if they filed a report that falsely represented that they had nothing to declare.

If a complaint with respect to a failure to file is filed with the Board of Ethic, the Board of Ethics is put in the position of having to evaluate whether a failure to file was intentional or whether it was an oversight. The ability of individuals who do not file the required reports to argue that the failure was inadvertent undoubtedly results in lower level of compliance than would be achieved if all Town Officers were required to make a filing stating, under oath, whether they had a financial interest to declare.

It has been suggested in the past that the Town should adopt a system that requires the mandatory filing of disclosure statements in each year. In 1991, the Town's auditors made such a recommendation, but it was pointed out that the Board of Ethics had no staff or budget to keep track of whether the required reports were being filed and that the review of several thousand reports, most of which would be devoid of any relevant information, would be overwhelmingly burdensome for the Board.

Such burdens would obviously be compounded by any requirement that Town Officers respond to a list of specific questions concerning their financial affairs and their compliance with the Code. Nevertheless, the question of whether a mandatory filing requirement should be adopted has continued to surface from time to time. The filing of reports that show no financial interest, particularly by a large number of members of the RTM, may be an indication that there is a belief in some quarters that mandatory filings would be better, at least for certain Town Officers.

Advances in technology may provide the Town with the opportunity to adopt a more robust reporting system without an overwhelming burden being placed on the Board or the Town's administrative officers. However, there are still unique aspects of the Town's structure of government as compared to financial institutions and other public organizations, which suggest that the types of systems that might be adopted by these organizations would not be suitable for all (or any) Town Officers in Greenwich. In particular, given the large number of elected officials involved with the RTM and the substantial participation of highly qualified volunteers in Greenwich's various boards and commissions, care must be taken that the burdens of any reporting system do not

outweigh its benefits. This is particularly true in the absence of any substantial indication that there is a significant lack of ethical behavior in Town government.

As stated below, the Board feels that the current reporting system could be enhanced by requiring certain officials to complete confidential questionnaires and integrating this process with the filings required under the Code. However, the Board does not believe that this level of detail is appropriate to be required of most Town Officers. Nor does it believe that such detailed reports should be filed publicly.

## **Requests for Advisory Opinions**

We received two requests for Advisory Opinions. Both involved the reporting of spousal interests in the annual financial disclosure statement.

The first request involved a member of the RTM whose spouse was a substitute teacher employed by the Board of Education. The Board addressed two issues under the Code. The first was whether the Board of Education, which by statute is not an agency of the Town, is a sufficiently distinct entity of the Town that the teacher's employment contract should not be considered a transaction with the Town. The Board considered that, since the funds used to pay the teacher were part of the Town's operating budget, the teacher's employment contract was a transaction with the Town and thus, since it was with a member of the RTM member's immediate family, was reportable by the member. The second issue was whether the interest was exempt from reporting because it was an interest in a transaction for personal services. The Board found that the exception did apply to the teacher, who is not required to report it. But the Board concluded that the exception did not apply to the RTM member. As an interest in a transaction with a spouse, the RTM member was reporting an indirect interest, while the exception was intended to avoid Town Officers from reporting the direct interests which gave rise to their positions as a Town Officers. Since the intent of the Code was to create an "exceptions" reporting system, the purpose of excluding the direct personal services interest was clearly to prevent all Town employees from reporting the obvious fact that they were Town employees. This intent would not be served by allowing Town Officers to avoid reporting the interests of their family members, and other sections of the Code clearly indicate that such indirect interests were intended to be reported.

The second request for an advisory opinion involved a teacher whose husband, as an independent contractor, served as an umpire in the Town's softball league and as a part time instructor conducting clinics for the Department of Parks and Recreation. As to the spouse's umpiring role, the Board found that the selection and compensation of umpires was controlled by the league and not the Town and that the umpires were paid by the individual teams. As a result, the services did not involve a transaction with the Town. As to the payment of the spouse for conducting the clinics, the Board found that a transaction with the Town did exist, but that the amount involved did not need to be reported, as it was nominal in the 2007-2008 year. The Board cautioned the teacher, however, that reporting might be required in future years if the amount involved were to increase.

In addition, members of the Board and the Board as a whole provided informal guidance to various Town Officers who requested such assistance.

### **Other Activities**

*Adoption of New Procedures and Mission Statement.* During the first half of the 2007-2008 Fiscal Year, under the leadership of Jeffery Ramer as Chair, the Board adopted a Statement of Procedures, in order to provide guidance for Town Officers and others concerning the procedures to be used by the Board in connection with annual disclosure statements, requests for advisory opinions and complaints. The new procedures were designed to be compliant with the Connecticut Freedom of Information Act while implementing as much as possible the provisions of the Code providing confidentiality for Town Officers. Included in the procedures was a confidential process for determinations of probable cause to be made by the Board prior to releasing information about the subject of any complaint filed with the Board. In addition the new procedures included a revised disclosure form and suggested forms that could be used to request advisory opinions and make complaints. During the second half of the Fiscal Year, in connection with approving enhancements to the Town Website related to ethics, the Board adopted a formal mission statement for the first time.

*Implementation of Ethics Hotline.* Following discussions with First Selectman Lash, the new procedures also called for the establishment of an independent hotline that could be used for complaints and other communications with the Board. The hotline is independent of the Town's telephone system and automatically forwards voice mail and fax messages to all members of the Board simultaneously when received.

*Coordination with Town Departments.* In December of 2007, Mr. Ramer was required to leave the Board due to his election to serve as a member of the Board of Estimate and Taxation. However, the Board continued to make efforts to raise the profile of the Code of Ethics within the Town. In April, First Selectman Tesei discussed initiatives that the Board might pursue that could enhance the effectiveness of the Board's operations. He suggested that the Board prepare a budget request for the 2009-2010 Fiscal Year to support those initiatives that the Board felt were appropriate. In addition, the Board met with Joan Sullivan, the Town's Purchasing Manager, to review the procedures used by the Purchasing Department in connection with Town contracts. In general, the Board found that the Town's purchasing procedures contained excellent controls to avoid conflicts of interest by Town employees from influencing any of its major purchases. The Board discussed mechanisms that might be used to encourage a high degree of ethical behavior on the part of bidders and contractors, since the Board felt that it was important that there be consequences for contractors who attempted to encourage, or succeeded in inducing, Town Officers to violate the Code. Subsequent to the meeting with the Board, Ms. Sullivan agreed to pursue modifications to the Town's bidding procedures in that regard. As of the date of this report, the Board is not aware that these changes have been made, however.

*Enhancements to Town Website.* With the assistance of Selectman Crumbine, the Board was also able to implement significant changes to the Town's web site concerning ethics matters. All information concerning the Board was updated and the Board's new

Mission Statement, adopted in April of 2008, was included. The main page for the Board of Ethics was also redesigned to contain an “I want to” menu that provides easy access to disclosure, advisory opinion and complain forms. A link was also provided on the page to provide access to the Board’s Statement of Procedures. In addition, the Board approved a revised set of Frequently Asked Questions concerning the Code of Ethics that can be accessed through the FAQ link of the Town’s Homepage. These FAQ’s provide guidance and practical examples concerning the requirements for the Code and the procedures to be followed in filing annual disclosure forms, requesting advisory opinions and making complaints. The Homepage was also revised to include a link to the Code of Ethics in the main menu for Town Government.

*Compilation of Prior Opinions.* The Board was fortunate to receive offers of volunteer help from two law students. These students have been assisting the Board to retrieve and organize the records of the Board, including its prior Advisory Opinions. During the past two years the composition of the Board has been entirely renewed. In addition to the loss of Mr. Ramer, the Board lost the services of Rev. Susan Craig, when she moved to Maine and has also lost valuable institutional memory due to the retirement of its long time Chair, Victor Coudert (although Mr. Coudert has generously volunteered his time when ever called upon by the Board). In 2004, Mr. Coudert was required to turn over all his records to the Department of Law in connection with a FOIA challenge. These record were later returned to the Selectmen’s office and then sent to storage, but the Board was not aware of this and lost track of the records. Selectmen Lavery and Crumbine have generously provided our interns with space in their offices in order to allow them to review the records and retrieve information concerning prior formal and informal advisory opinions and annual reports. The Board is hoping that these will be able to be used to prepare a set of reports of the Board’s prior decisions for use by the Board, the Town Attorney and others as a reference in connection with the Board’s future activities.

## **Plans and Recommendations.**

*Continuing Initiatives.* During the 2008-2009 Fiscal Year, the Board expects to continue its initiatives in connection with retrieving and organizing its records, meeting with Town mangers to discuss ethics issues and informing Town Officers and the community at large about the requirements of the Code.

*New Initiatives.* The Board plans to implement additional enhancements to the annual disclosure form, including a set of instructions to provide specific guidance on filing out the form. The Board has also discussed the implementation of training sessions to assist Town Officers in the who, why, what, where and when of the disclosure process, which members of the Board have indicated a willingness to conduct.

*Recommendations.* Following a review of its activities and experiences in the 2007-2008 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

1. Implement Enhancements to the Ethics Hotline. The Board feels that the implementation of the Ethics Hotline has been a success and it has

received valuable input from its use. At the current time, however, the cost of the Hotline is being covered by the members of the Board and its functions are limited. The Board intends to request the expenditure of a modest amount of funds to implement enhancements to the Hotline, so that a customized message can be provided to give instructions on its use. The Board has received indications that persons have called the hotline and have not left a message and believes that this is likely due to the fact that the caller is uncertain whether he or she has reached the right number.

2. Consider Further Procedures for Key Officials and Employees. The Board believes that mandatory reporting and public filing of extensive forms by all Town Officers is not appropriate. However, it also feels that the completion of detailed disclosure forms by certain key officers and employees of the Town would improve the chances that the requirements of the Code would be properly adhered to. Such detailed forms should not be publicly filed, but should be retained confidentially in the individual's personnel file. However, the individuals completing these detailed questionnaires should be reminded that, if they become aware of an interest that is required to be reported by the Code as a result of filling out the form, they should prepare and file a disclosure form with the Town Clerk. In this way, the reports filed with the Town Clerk will continue to be limited to relevant information, but the chances of inadvertent non-compliance will be significantly reduced.
3. Consider Additional Ethics Training. The Board believes that additional training in ethics issues, particularly as to the requirements of annual disclosure filings, may be beneficial for Town Officers and would be pleased to assist in implementing such training.

The Board would be pleased to further discuss its plans and recommendations with interested persons.

**October 12, 2008**